

Application Serial No. 10/039,047
Attorney Docket No. 60027.0218USU1/BS01155
Amendment & Response

REMARKS

This Amendment is in response to the Office Action dated March 10, 2006. Claims 6, 7, 9, 10, 13, 19, 36, 37, and 39 were examined in the Office Action. Claims 6, 7, 9, 10, 13, 19, 36, 37, and 39 were rejected. A declaration under 37 CFR 1.131 is provided concurrently with this amendment and response to provide more detailed support and exhibits than previously submitted. Examination and reconsideration based on this Amendment and the following remarks are respectfully requested.

Claim Objections

Claim 13 has been amended in accordance with the Examiner's presumption outlined in the Office Action and is now believed to be in a condition for allowance.

Claim Rejections - 35 U.S.C. § 103

Claims 6, 7, 9, 10, 36, 37, and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sahai et al., U.S. Patent No. 6,594,699 (hereinafter Sahai) and Natarajan et al., U.S. Patent No. 6,539,427 (hereinafter Natarajan), and Bahadiroglu, U.S. Patent Application Publication No. 2002/0186660 (hereinafter Bahadiroglu):

Claims 13 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sahai and Bahadiroglu. Applicant respectfully submits, however, that Bahadiroglu does not qualify as prior art under 35 U.S.C. §103(a). The filing date of the Bahadiroglu published application is June 12, 2001. The Declaration of Lee Friedman under 37 C.F.R. §1.131 establishes conception of the invention defined by the claims in the present application in the United States prior to June 12, 2001 and, coupled with due diligence, establishes filing of the present application on December 31, 2001 claiming priority to Provisional Patent Application Serial No. 60/336,332, filed November 2, 2001.

For instance, claim 6 recites a method executed by a device for adapting data according to quality of service parameters associated with network elements down stream from the device. Claim 6 also recites receiving instructions to adapt data. Mr. Friedman states in paragraph 5 of his Declaration that the draft application of Exhibit X was completed prior to the date of the reference. Mr. Friedman also states in paragraphs 6 and 7 of the Declaration that Exhibit X

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describes when network segment parameters change, that central servers reprogram dispersed media servers to adapt to accommodate the new network parameters. Moreover claim 6 recites receiving data from a sending device, adapting the data to conform to QoS parameters, and requesting new programming upon detecting changes in QoS.

Similarly, Mr. Friedman states in paragraph 7 of his Declaration that pages 10-12 of Exhibit X disclose a process flow of the media server including programming of media servers to adapt to multimedia content, receiving transmission of content data from source servers, and transmitting multimedia content to intended recipients base on parameters of intended network segments. Mr. Friedman also states in paragraph 8 of his Declaration that pages 10-12 of Exhibit X disclose Figure 1 and a description of Figure 1 illustrating dispersed media server architecture with media servers programmed by central servers to adapt multimedia content according to parameters of each intended network segment downstream.

Because the draft patent application of Exhibit X is prior to the date of the reference and contains a complete description of all elements of claims 6, 13, and 36, the Declaration is conclusive evidence that conception of claims 6, 13, and 36 occurred prior to the date of the reference. The facts attested to in the Declaration of Lee Friedman establish that Exhibit X discloses elements," receiving at the device instructions, wherein the instructions instruct the device to adapt the data; receiving the data from a sending device; adapting the data to conform to the quality of service parameters associated with each network segment transmitting the adapted data along each network segment to a client; and requesting new programming for adapting the data upon detecting changes in the quality of service parameters for each network segment."

The facts also establish that Exhibit X discloses elements," a network device for distributing instructions, wherein the instructions are for adapting the data according to a quality of service parameters associated with the disparate network segments in the communications network" and "a media server for receiving the instructions from the network device, implementing the instructions to adapt the data according to the quality of service parameters, and transmitting the adapted data along disparate network segments to a receiving device." Thus, the facts establish that the Applicant had reduced the invention to practice at least by June 12, 2001 or at most by November 2, 2001 coupled with due diligence.

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With regard to due diligence, the Declaration of Lee Friedman under 37 C.F.R. §1.131 establishes in paragraph 10 that the final draft provisional patent application shown in Exhibit Y was complete prior to November 2, 2001 and discloses distribution of multimedia content to multiple destinations on a heterogeneous network. For instance, claim 13 recites a system for transmitting data from a server to receiving devices located at the end of disparate segments in a communications network. Claim 13 also recites a network device for distributing instructions for adapting the data according to quality of service parameters. Similarly, Mr. Friedman states in paragraph 11 of his Declaration that page 5 of Exhibit Y describes network segments that are subject to varying distribution parameters and that these parameters establish a "quality of service" of each network segment. And that page 7 of Exhibit Y discloses when network segment parameters change, that central servers reprogram dispersed media servers to adapt to accommodate the new network parameters.

Still similarly, claim 13 recites a media server for receiving the instructions from the network device, implementing the instructions to adapt the data, transmit the adapted data, and request new programming upon detecting changes in QoS. Mr. Friedman in his Declaration states in paragraph 12 that pages 13-16 of Exhibit Y disclose a process flow of the media server including programming of media servers to adapt to multimedia content, receiving transmission of content data from source servers, and transmitting multimedia content to intended recipients based on parameters of intended network segments.

Because the final draft provisional patent application of Exhibit Y is prior to the filing date of November 2, 2001 yet subsequent to the reference date of June 12, 2001 but contains a complete description of all elements of claims 6, 13, and 36, the Declaration is conclusive evidence that reduction to practice of claims 6, 13, and 36 occurred with diligence on November 2, 2001. The facts attested to in the Declaration establish conception before June 12, 2001 and the exchange of drafts over several weeks concluding with the filing of the provisional patent application on November 2, 2001. MPEP 715.07 states that "an applicant may be diligent within the meaning of the patent law when he or she is doing nothing, if his or her lack of activity is excused. Note, however, that the record must set forth an explanation or excuse for the inactivity; the USPTO or courts will not speculate on possible explanations for delay or inactivity." The facts attested to in the Declaration and Exhibit Y support an exchange of drafts and also set forth

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an explanation for delay or inactivity thus, establishing due diligence. Therefore, the rejection of claims 6, 7, 9, 10, 13, 19, 36, 37, and 39 under 35 U.S.C. §103(a) should be withdrawn.

Applicant also submits that independent claims 6, 13, and 36 are not obvious over Sahai and/or Natarajan because Sahai and Natarajan, neither alone nor in combination, teach each recitation of claims 6, 13, and 36. For example, neither Sahai nor Natarajan alone or in combination teach or suggest "requesting new programming for adapting the data upon detecting changes in the quality of service parameters for each network segment." (See Sahai and Natarajan abstracts). Thus, Applicant also respectfully traverses the assertion that dynamically adapting data upon detecting changes in the quality of service parameters for each network segment was widely known in the art at the time of the invention.

Furthermore, at least because Bahadiroglu is not prior art, and because Sahai and/or Natarajan do not teach, suggest or describe each of the recitations of claims 6, 13, and 36, Applicant respectfully submits that the rejection of these claims under 35 U.S.C. §103(a) should be withdrawn for at least this reason also.

Dependent Claims 7, 9, 10, 37, and 39

Regarding claims 7, 9, 10, 37, and 39, Applicant submits that claims 7, 9, 10, 37, and 39 are also in condition for allowance by virtue of their dependency on allowable independent claims 6, 13, and 36. MPEP §2143.03 citing *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). Accordingly, Applicant respectfully requests withdrawal of the rejection to claims 7, 9, 10, 37, and 39 for at least this reason also. Regarding the Examiner's additional assertions, which have not been addressed specifically, Applicant respectfully submits that these arguments are moot in view of the above remarks. Accordingly, in view of the above arguments, Applicant respectfully submits that claims 7, 9, 10, 37, and 39 are in condition for allowance.


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CONCLUSION

In view of the above amendments and remarks, Applicant respectfully requests a Notice of Allowance. If the Examiner believes a telephone conference would advance the prosecution of this application, the Examiner is invited to telephone the undersigned at the below-listed telephone number.

Respectfully submitted,
MERCHANT & GOULD

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